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101ST CONGRESS
1st Session

SENATE

REPORT
101-16

LEGISLATIVE AND OVERSIGHT ACTIVITIES DURING THE 100TH CONGRESS BY THE SENATE COMMITTEE ON VETERANS' AFFAIRS

REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

APRIL 7 (legislative day, JANUARY 3), 1989.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

29-010 WASHINGTON : 1989

S763-1

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Mr. CRANSTON, from the Committee on Veterans' Affairs, submitted the following

REPORT

Pursuant to paragraph 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs submits its report on legislative and oversight activities during the 100th Congress.

I. INTRODUCTION

It is noted that as of March 15, 1989, pursuant to the Department of Veterans Affairs Act (Public Law 100-527), the Veterans' Administration was elevated to cabinet-department status and redesignated as the Department of Veterans Affairs. References to the department and its predecessor agency are both hereinafter referred to as "VA" and all references to the head of the department/agency are in the terminology, "Administrator of Veterans' Affairs" or "Administrator", in use during the 100th Congress.

A. HEARINGS

During the 100th Congress, the Committee held 25 days of hearings on legislative and oversight matters and on the legislative recommendations of veterans' service organizations. Among those were 7 days of hearings on VA health-care programs and related matters; 2 days on VA compensation and pension; 1 day on issues relating to homeless veterans; 1 day on judicial review of VA denials of claims for benefits; 1 day on VA's program of vocational rehabilitation for service-connected disabled veterans; 2 days on veterans' programs budget matters; 2 days on veterans education programs; 2 days on VA's home loan guaranty program; and 2 days on issues related to veterans' exposure to Agent Orange or ionizing radiation.

B. LEGISLATION

The Committee met in open session 5 times and reported 11 bills to the Senate, the provisions of 10 of which, with modifications, were ultimately enacted into 11 public laws.

Those enacted into law during the First Session included:

1. The New GI Bill Continuation Act (Public Law 100–48), signed June 1, 1987.

2. The Veterans Home Loan Program Improvements and Property Rehabilitation Act of 1987 (Public Law 100–198), signed December 21, 1987.

3. The Veterans' Compensation Cost-of-Living Adjustment Act of 1987 (Public Law 100–227), signed December 31, 1987.

Also during the First Session, provisions within the Committee's jurisdiction were enacted in the Joint Resolution of February 12, 1987, relating to certain programs for homeless individuals (Public Law 100–6), signed February 12, 1987; provisions which the Committee had reported in S. 477 were included in section 901 of the Stewart B. McKinney Homeless Assistance Act (Public Law 100–77), signed July 22, 1987; provisions within the Committee's jurisdiction were enacted, with the Committee's participation, in an Act extending certain VA home loan guaranty provisions (Public Law 100–136), signed October 16, 1987; and provisions derived from provisions that the Committee had recommended pursuant to reconciliation instructions were enacted in title VII of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), signed December 22, 1987.

Those enacted into law during the Second Session included:

1. The Veterans' Home Loan Program Amendments of 1988 (Public Law 100–253), signed February 29, 1988.

2. The Radiation-Exposed Veterans Compensation Act of 1988 (Public Law 100–321), signed May 20, 1988.

3. The Veterans' Benefits and Services Act of 1988 (Public Law 100–322), signed May 20, 1988.

4. The Veterans' Employment, Training, and Counseling Amendments of 1988 (Public Law 100–323), signed May 20, 1988.

5. The Veterans Judicial Review Act (Division A of Public Law 100–687), signed November 18, 1988, and the Veterans' Benefits Improvement Act of 1988, Division B of that same law.

6. The Veterans' Benefits and Programs Improvement Act of 1988 (Public Law 100–689), signed November 18, 1988.

Also during the Second Session, provisions within the jurisdiction of the Committee were enacted, with the Committee's participation, in section 15 of the Department of Veterans Affairs Act (Public Law 100–527), signed October 25, 1988; in section 801 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100–628), signed November 7, 1988; and in sections 2501, 2502, and 5301(d) of the Anti-Drug Abuse Act of 1988 (Public Law 100–690), signed November 18, 1988.

II. Budget on Veterans Programs

A. FIRST SESSION

On February 18, 1987, the Committee held a hearing on the budget for veterans' programs for fiscal year 1988. On February 27, 1987, pursuant to a unanimous vote on February 26, 1987, and the requirements of section 301(c) of the Congressional Budget Act of 1934, the Committee submitted a report of its budget views and estimates to the Budget Committee.

B. SECOND SESSION

On March 4, 1988, the Committee held a hearing on the budget for veterans' programs for fiscal year 1989. On March 25, 1988, pursuant to unanimous vote on March 17, 1988, and the above-referenced requirements, the Committee submitted a report of its budget views and estimates to the Budget Committee.

III. Service-Connected Compensation and Related Programs

A. OVERVIEW

VA's disability compensation program provides monthly cash payments to veterans who, because of disabilities incurred or aggravated during active duty, are considered to have suffered impairments of earning capacity. The amount paid in individual instances is contingent upon the nature of the veteran's disability, or combination of disabilities, and the extent to which earning capacity is deemed to have been impaired. In fiscal year 1989, an estimated 2,202,900 veterans will receive compensation benefits.

Dependency and indemnity compensation (DIC) benefits are payable to the surviving spouse and children of a veteran whose death occurs during active duty or as a result of service-connected causes. This benefit is intended to compensate for the loss of family income. In fiscal year 1989, an estimated 328,200 survivors will receive benefits under this program.

In addition, Congress has established programs to meet certain specific needs of service-disabled veterans, including programs of specially-adapted housing grants and automobile-purchase and adaptive-automobile-equipment assistance.

The Committee's principle concerns regarding VA compensation programs include the necessity to ensure that benefits are appropriately adjusted to keep pace with inflation, appropriate benefits are paid in all cases in which a veteran's death or disability is incurred during the veteran's service, and the administration of the system for adjudicating claims for compensation benefits is fair and efficient. In the course of the 100th Congress, the Committee conducted hearings on these and other issues involving the need for improvements in these programs.

B. FIRST SESSION

During the First Session of the 100th Congress, the Committee held a hearing on June 30, 1987, to engage in oversight of the service-connected compensation programs and to consider various measures relating to these programs, including S. 9, S. 453, S. 917,

S. 919, S. 940, S. 1002, S. 1090, and S. 1365. The Committee received testimony from VA and various veterans' service organizations.

After reviewing the testimony, the Committee met in open session on July 31, 1987, to consider S. 9 and provisions from related bills. The Committee voted unanimously to report S. 9 with an amendment in the nature of a substitute derived in part from S. 9 as introduced and provisions of the other aforementioned bills.

As reported (S. Rept. 100–215) on November 6, 1987, S. 9 provided for a cost-of-living adjustment (COLA) in compensation and DIC benefits—to be effective on the same date, December 1, 1987, and at the same percentage as the fiscal year 1988 Social Security COLA—and made numerous other improvements in these and related programs and certain other veterans programs. On December 4, 1987, the Senate agreed to S. 9 as reported, with certain amendments made on the floor, and passed H.R. 2616 with an amendment in the nature of a substitute incorporating the text of S. 9 as amended. Subsequently, on December 17, 1987, the Senate passed H.R. 2945 with an amendment in the nature of a substitute incorporating (in title I) the agreement between the House and Senate Committees on Veterans' Affairs on an FY 1988 compensation/DIC COLA. The bill, as enacted on December 31, 1988, as Public Law 100–227, the Veterans' Compensation Cost-of-Living Adjustment Act of 1987, provided a 4.2-percent COLA, effective as of December 1, 1987.

Certain other provisions of S. 9 dealing with compensation for radiation-exposed veterans and with certain compensation-related programs were enacted during the Second Session (see below).

C. SECOND SESSION

On April 25, 1988, the Senate passed H.R. 1811 with an amendment in the nature of a substitute incorporating a compromise agreement between the House and Senate Committees on Veterans' Affairs regarding the provisions of H.R. 1811 as passed by the House and the provisions of title II of S. 9 as passed by the Senate in H.R. 2616 (see the above discussion of S. 9 in the First Session) relating to compensation for radiation-exposed veterans. The bill was enacted on May 20, 1988, as Public Law 100–321, the Radiation-Exposed Veterans Compensation Act of 1988. This law established presumptions of service connection for certain cancers which become manifest to a degree of 10 percent or more within 40 years (30 years in the case of leukemia) after the last date on which the veteran participated onsite in an atmospheric nuclear test, or had opportunity for exposure—similar to the exposure of the occupation forces in Hiroshima and Nagasaki—while interned as a prisoner of war in Japan during World War II. The cancers are:

1. Leukemia, other than chronic lymphocytic leukemia.
2. Cancer of the thyroid.
3. Cancer of the breast.
4. Cancer of the pharynx.
5. Cancer of the esophagus.
6. Cancer of the stomach.
7. Cancer of the small intestine.
8. Cancer of the pancreas.

9. Multiple myeloma.
10. Lymphomas (except Hodgkin's disease).
11. Cancer of the bile ducts.
12. Cancer of the gall bladder.
13. Primary liver cancer (except if cirrhosis or hepatitis B is indicated).

On May 12, 1988, the Committee held a hearing to engage in oversight of the compensation program in relation to claims based on exposure to Agent Orange in Vietnam and to receive testimony on related legislation, S. 1692 and S. 1787.

On March 30, 1988, the Senate disagreed to House amendments to the December 4, 1987 Senate amendments to H.R. 2616, as amended, and requested a conference. The Report of the Conference Committee (H. Rept. 100-578) was filed on April 27, 1988, agreed to by the House and Senate on April 27 and 28, respectively, and signed into law on May 20, 1988, as Public Law 100-322, the Veterans' Benefits and Services Act of 1988.

Public Law 100-322 contained provisions amending service-connected programs which:

1. Increased, effective April 1, 1988, from $35,500 to $38,000, the specially adapted housing assistance allowance for certain mobility-impaired veterans and from $6,000 to $6,500 the specially adapted housing assistance allowance for veterans with service-connected blindness in both eyes or loss, or loss of use, of both hands.
2. Increased the automobile assistance allowance from $5,000 to $5,500 effective April 1, 1988.
3. Increased the burial allowance for veterans who died as the result of a service-connected disability from $1,100 to $1,500 effective April 1, 1988.
4. Expanded the definition of former prisoner of war to include certain veterans interned by other than enemy governments during a period of war under circumstances which the Administrator determines were similar to those experienced by prisoners of war.
5. Established a presumption of service connection for former prisoners of war for peripheral neuropathy (except where directly related to infectious causes), irritable bowel syndrome, and peptic ulcer disease.
6. Established a presumption of service connection for lupus erythematosus, systemic which became manifest to a degree of 10 percent or more within one year from the date of discharge from service.
7. Restored to certain beneficiaries of DIC-equivalent benefits the Social Security-equivalent benefits paid by VA to survivors of veterans who died from service-connected causes and who were inadvertently omitted from legislation that restored such benefits in 1982.

On June 9, 1988, the Committee held a hearing to conduct oversight on the compensation program and to receive testimony on compensation-related legislation in S. 2011, S. 2015, and S. 1805. The Committee received testimony from VA and various veterans' organizations.

After reviewing the testimony from the hearing, the Committee met in open session on June 29, 1988, and voted unanimously to

report S. 2011 with an amendment in the nature of a substitute incorporating provisions derived in part from S. 2011 as introduced and S. 2015 and S. 1805.

As reported (S. Rept. 100-439) on August 1, 1988, S. 2011 provided for a compensation/DIC COLA—to be effective on the same date, December 1, 1988, and at the percentage as the fiscal year 1989 Social Security COLA—and provisions relating to compensation based on exposure to Agent Orange and establishing an interim period for the award of compensation—and DIC-equivalent benefits in the cases of vietnam veterans having non-Hodgkin's lymphoma.

On October 18, 1988, the Senate agreed to the provisions of S. 2011 as reported and with certain amendments adopted on the floor and passed S. 11 as amended by the House, with an amendment in the nature of a substitute, which included provisions of S. 2011 as amended.

On October 20, the Senate agreed to House amendments, which comprised an agreement between the House and Senate Committees on Veterans' Affairs, to S. 11 and the bill was signed into law on November 18, 1988, as Public Law 100-687, Division B of which is known as the Veterans' Benefits Improvement Act of 1988. Division B of Public Law 100-687 included provisions which:

1. Provided a 4.1-percent compensation/DIC COLA effective December 1, 1988.

2. Permit $3 million in VA funds appropriated in fiscal year 1984 for the Agent Orange epidemiological study to remain available until September 30, 1989, and to be transferred to the Department of the Air Force for use in conducting blood tests of individual participation in the Ranch Hand epidemiological study.

3. Authorize $1 million of VA funds appropriated in fiscal year 1984 to be used for a review of the scientific literature pertaining to health effects of exposure to dioxin.

4. Extended from September 30, 1989, to December 31, 1990, the basic VA health-care eligibility for veterans who may have been exposed to a toxic substance in a herbicide or defoliant in Vietnam or to ionizing radiation from the atmospheric detonation of a a nuclear device.

5. Require VA to conduct an outreach program to notify Vietnam veterans of health risks, if any, from exposure to herbicides in Vietnam as information becomes available.

6. Require, effective March 1, 1989, that at least one-third of the Ranch Hand Study Advisory Committee be composed of qualified scientists nominated by veterans' organizations and provided that the Chairman of the Advisory Committee may be a government scientist if the Secretary of Health and Human Services determines that a qualified non-government scientist is not available.

7. Extended for 3 years, until January 31, 1992, the program of trial work periods and vocational rehabilitation for certain veterans with service-connected disabilities rated at 100 percent based on individual unemployability.

8. Modified the DIC length-of-marriage eligibility criteria for surviving spouses of service-disabled veterans who were rated totally disabled for 10 years prior to death, or for at least 5 years continuously from date of discharge to the date of death, but whose death

is not service connected, so as to eliminate any length-of-marriage requirement in cases in which a child is born of or before the marriage.

IV. Non-Service-Connected Pension Programs

A. OVERVIEW

The VA pension programs provide need-based income-security benefits to wartime veterans who are totally and permanently disabled from non-service-connected causes, or have reached the age of 65, and to the needy surviving spouses and children of wartime veterans.

In fiscal year 1989, an estimated 616,465 veterans and 614,474 surviving spouses and children will receive VA pension.

B. FIRST SESSION

The Veterans' Compensation Cost-of-Living Adjustment Act of 1987 (Public Law 100-227), enacted December 31, 1987 (discussed above), contained a provision raising from 2,500 to 3,500 the number of veterans newly awarded pension during a program year (February 1-January 31) who may be evaluated to determine their suitability for participation in the program of vocational training services under section 524 of title 38, United States Code.

C. SECOND SESSION

The Veterans' Benefits Improvement Act of 1988 (Division B of Public Law 100-687), enacted November 18, 1988 (discussed above), contained provisions which, with respect to non-service-connected pension:

1. Provide that payments received as a result of the settlement of the Agent Orange Product Liability Litigation in the United States District for the Eastern District of New York shall not be counted as income for non-service-connected pension purposes.
2. Expanded the category of pensioners eligible for vocational training under section 524 of title 38 to include veterans awarded pension prior to February 1, 1985.
3. Extended for 3 years, until January 31, 1992, the section 524 program and the program under section 525 of title 38 for the protection of VA health-care eligibility for those who lose VA pension entitlement as a result of increased earnings.
4. Clarified that payments received as casualty-loss reimbursements shall not be counted as income for pension purposes.

V. Health Care

A. OVERVIEW

VA administers a national health-care network for the purpose of providing a complete medical and hospital service for the medical and rehabilitative care and treatment of eligible veterans. The VA health-care system is an integrated national system of teaching hospitals, general and specialty clinics, research centers, nursing homes, and other facilities providing a broad range of inpatient and outpatient health-care services to eligible veterans.

VA provides health care through 172 hospitals, 237 outpatient clinics, 125 nursing home care units, and 27 domiciliary-care facilities, and readjustment counseling for Vietnam-era veterans through 194 counseling centers (Vet Centers). In fiscal year 1988, VA hospitals provided inpatient care to 1,086,456 veterans and conducted 21,473,000 outpatient visits; VA nursing home care and domiciliary care units provided care to more than 43,827 veterans; hospitals and nursing homes under contract to the VA provided care to 69,609 veterans; and care was provided through State veterans' facilities with VA assistance to 24,483 veterans. In addition, hospital care for approximately 300 individuals and 343,941 outpatient visits were provided through CHAMPVA—the Civilian Health and Medical Program of the Veterans' Administration. Under CHAMPVA reimbursements for the cost of health care obtained in private health-care facilities are provided to the spouse and dependent children of a veteran who has a permanent and total service-connected disability and also to the survivors of veterans who either died as a result of a service-connected disability or at the time of death had a permanent and total service-connected disability.

B. FIRST SESSION

On May 21, 1987, the Committee held a hearing to engage in oversight of VA health-care programs and to consider various health-care related bills—S. 6, S. 105, S. 216, S. 631, S. 713, S. 894, S. 915, S. 939, S. 1062, S. 1065, S. 1089, S. 1125, S. 1136, and S. 1195. The Committee received testimony from VA, various veterans' organizations, and other concerned groups and individuals. After reviewing the testimony, the Committee met in open session on July 31, 1987, to consider a Committee Print of S. 9 incorporating in title III thereof provisions derived from the above-mentioned measures. The Committee voted unanimously, after certain amendments were defeated, to report S. 9 with an amendment in the nature of a substitute incorporating the provisions of the Committee print.

As reported (S. Rept. 100–215) on November 6, 1987, S. 9 contained numerous provisions to improve VA health-care programs.

On December 4, 1987, the Senate agreed to S. 9 as reported, with certain amendments made on the floor, and passed H.R. 2616 with an amendment in the nature of a substitute incorporating the text of S. 9 as amended. However, none of the health-care related provisions of the bill were enacted in the First Session of the 100th Congress.

C. SECOND SESSION

On March 30, 1988, the Senate disagreed to the House amendments to the December 4, 1987, Senate amendments to H.R. 2616, as amended, and requested a conference. The Report of the Conference Committee (H. Rept. 100–578) was filed on April 21, 1988, agreed to by the House and Senate on April 27 and 28, respectively, and signed into law on May 20, 1988, as Public Law 100–322, the Veterans' Benefits and Services Act of 1988.

Public Law 100–322 included health-care provisions which:

Health-Care Programs

1. Require that, effective July 1, 1988, the VA shall furnish on an ambulatory or outpatient basis such medical services as the Administrator determines are needed to—

(a) any veteran for a service-connected disability;

(b) any veteran with a service-connected disability rating of 50 percent or more for any disability; and

(c) any veteran for a disability incurred as a result of VA treatment or in pursuit of vocational rehabilitation.

2. Require that, effective July 1, 1988, the VA shall furnish on an ambulatory or outpatient basis such medical services as the Administrator determines are reasonably necessary in preparation for or to obviate the need for hospital admission, or to complete treatment begun during hopsital or other institutional care, to—

(a) any veteran with a service-connected disability rating of 30 or 40 percent; and,

(b) any veteran whose annual income does not exceed the maximum annual rate of non-service-connected pension payable to a veteran in need of aid and attendance.

3. Effective July 1, 1988, modify the priorities for VA outpatient treatment so as to give first priority to veterans described in items 1 and 2, above, and thereafter to give priority to other veterans in the following order—

(a) any veteran who has a service-connected disability rating of less than 30 percent or any veteran for a compensation or pension examination.

(b) any veteran who is a former prisoner of war or a veteran with eligibility based on exposure to toxic substances in Vietnam or to ionizing radiation from the atmospheric detonation of a nuclear device.

(c) any veteran of the Mexican border period or World War I and any veteran in receipt of increased pension or compensation based on the need of regular aid and attendance or by reason of being permanently housebound; and

(d) any veteran whose annual income exceeds the maximum annual rate of pension for a veteran in need of aid and attendance, but whose income is below the category A threshold ($16,466 for a single veteran and $19,759 for a veteran with one dependent, plus $1,098 for each additional dependent, as of January 1, 1989).

4. Modified the eligibility criteria for VA domiciliary care so as to authorize care for any veteran in need of such care whose annual incomes does not exceed the maximum annual rate of pension payable to a veteran in need of aid and attendance or who has no adequate means of support. Veterans who were patients or residents in a State home facility or a domiciliary facility during the period January 1, 1987, through April 1, 1988, whose income exceeds such maximum annual rate of pension may remain in the State or VA facility.

5. Clarified the definition of nursing home care which VA may furnish so as to include care delivered in skilled, intermediate, and combined nursing home care facilities and to exclude domiciliary care.

6. Authorize contracts for (a) emergency hospital care for veterans being furnished community nursing home care at VA expense; and (b) inpatient or outpatient diagnostic services to determine a veteran's eligibility for a VA benefit or service.

7. Clarified VA's authority to furnish care outside of the United States so as to authorize such care (a) as part of a program of VA vocational rehabilitation, (b) for the service-connected disability of a veteran in Canada or the Philippines, and (c) as a discretionary matter, for a service-connected disability of a U.S. veteran located elsewhere.

8. Reduced the minimum internment period required for eligibility for outpatient dental care for former prisoners or war from 6 months to 90 days.

9. Repealed the mandatory transition of Vietnam-era veterans readjustment counseling centers from a program operated primarily in locations apart from VA medical facilities (Vet Centers) to a program primarily operated in VA medical facilities; require the VA to submit, at any time except within 60 days before or after the end of a Session of Congress, a national plan which sets forth plans with respect to each Vet Center in existence on February 1, 1988; prohibit an action from being taken with respect to any Vet Center for 120 days after submission of the national plan; and require any revisions of the plan to be submitted 60 days in advance of any action pursuant to a revision.

10. Provide that, effective July 1, 1988, during any fiscal year in which the Administrator exercises the authority to make beneficiary travel payments, payments shall be made for travel in connection with examinations, care, or treatment for which the veteran is eligible to—

(a) a veteran traveling in connection with care for a service-connected disability;

(b) a veteran with a service-connected disability rating of 30 percent or more;

(c) a veteran in receipt of VA pension;

(d) a veteran whose annual income does not exceed the maximum annual rate of pension which would be payable if the veteran were eligible for pension;

(e) subject to certain restrictions relating to advance approval, a veteran for whom ambulance, wheelchair-van or other special mode of transportation is medically required and a determination is made that the veteran is unable to bear the cost of such transportation;

(f) a veteran who is found to be unable to defray the expenses of travel; and

(g) a veteran traveling for the purpose of a VA compensation or pension examination.

In addition, VA would be authorized to provide by regulation for payments to others. Eligible veterans will be responsible for the first $6 of the cost of the travel. For those whose medical conditions have been determined to warrant frequent visits, the maximum monthly amount for which the veteran will be responsible is $18.

11. Require the Administrator to facilitate the establishment and maintenance, in consultation and coordination with the Secretary of Transportation and representatives of veterans' service organiza-

tions, of a program under which organizations, or individuals volunteering their services to VA, would take responsibility for the transportation of veterans to VA facilities without reimbursement from VA.

12. Extended the authoirity to provide adult day health care for three years, from September 30, 1988 to September 30, 1991.

13. Revised the requirement for VA to report on the use of all its contract authorities during the preceding fiscal year and require the report to be submitted with the annual budget submission to the Congress.

14. Authorize VA, subject to the availability of specific appropriations for this purpose, to conduct a 2-year pilot program to evaluate the use of mobile health care clinics for eligible veterans residing in rural areas at least 100 miles from the nearest VA health care facility. The pilot program may be carried out using at least two mobile health-care clinics in the Northeast, the Midwest, the South, and the West. Appropriations of $5,000,000 for each of the FYs 1989 and 1990 are authorized for the program.

15. Require the VA to provide information to the extent feasible for FYs 1986–1988 on the number of veterans treated by VA for mental illness disabilities on an inpatient basis and the effects of implementation of VA's new resource allocation methodology on the numbers of veterans being treated by VA for mental illness disabilities.

16. Require VA to conduct (directly or by contracts) a pilot program of community-based residential care for certain homeless chronically mentally-ill veterans—and authorize VA to include in the program veterans being furnished hospital or nursing home care by VA for chronic mental illness disabilities and veterans with service-connected chronic mental disabilities—in halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities for the period ending September 30, 1989. Appropriations of $6,000,000 for each of FYs 1988 and 1989 are authorized.

17. Require VA to report not later than December 15 in each of three fiscal years beginning in 1988 on the activities of the VA in assisting homeless veterans.

18. Provide for confidentiality of medical records that identify persons with AIDS except (a) for disclosures necessary in medical emergencies, (b) upon written requests of public-health authorities, and (c) where a physician or professional counselor believes that a patient infected with the AIDS virus will not provide the information to the spouse or sexual partner and disclosure is necessary to protect the health of the spouse or sexual partner.

19. Prohibit discrimination in admission or treatment of veterans solely because of infection with the AIDS virus.

20. Require AIDS-prevention information and training programs for VA employees and beneficiaries.

21. Generally prohibit widespread VA testing programs for the AIDS virus unless funds have been specifically appropriated for that purpose, but require VA to offer voluntary testing to VA patients who are at high risk for infection with the virus.

22. Authorize VA to provide recreational activities for its institutionalized patients at non-VA facilities.

23. Authorize VA to assist certain approved organizations in providing national recreational activities which further the rehabilitation of disabled veterans and to accept contributions to enable it to provide such assistance.

24. Permit VA to authorize the use of its name, seal, and other official symbols by such organizations which provide, or make significant gifts or contributions for the support of, such activities.

25. Restrict the Administrator's authority to prescribe limitations on the furnishing of VA health-care services as to permit such limitations to apply only during times of national emergency.

26. Increased the rates of VA per diem payments to State homes for nursing home care from $17. 05 to $20.35; for domiciliary care form $7.30 to $8.70; and for hospital care from $15.25 to $20.35.

27. Authorize VA to increase the State Home per diem rates annually, beginning with FY 1989, by a percentage not greater than the percentage increase in the cost of care in VA hospitals.

28. Include mental illness research, rehabilitation research, and research into injuries and illnesses particularly related to service among VA's specific research missions.

29. Required VA to convert by June 1, 1988, in urban areas where there are significant numbers of homeless veterans, unused space in VA facilities to 500 domiciliary beds for the care primarily of homeless veterans.

Health-Care Administration

30. Required VA to take actions not later than 60 days after enactment (and submit a report thereon not later than 75 days after enactment) to improve the operation of its health-care quality assurance activities, including actions to:

(a) upgrade the Office of Quality Assurance in VA's Central Office and assign it responsibility for risk management activities (to be carried out with the concurrence of the General Counsel);

(b) expand, and assign higher priority and greater resources to, quality-assurance program and activities at each VA health-care facility, including implementation of occurrence screening and the maximum utilization of the facility's computerized management information system for such activities;

(c) upgrade and expand the Office of the Medical Inspector, including increasing the number of employees assigned to it on a full-time basis so as to ensure that each medical inspection carried out by that office includes at least one such full-time employee and otherwise ensuring that adequate numbers of qualified employees are assigned to that office to ensure the independence, objectivity, and accountability of that office; and

(d) upgrade an expand the activities of VA's Office of the Inspector General in overseeing, monitoring, and evaluating the operations of health-care quality-assurance programs and activities and the Medical Inspector Office.

31. Clarified that a 6-year statute of limitations applies to suits brought by the United States to recover costs of VA health care; expanded the circumstances under which the federal government accepts liability for acts of VA employees to cover intentional torts

committed while acting within the scope of employment; and removed a statutory limitation on the authority of the Administrator to settle administrative tort claims under the Federal Tort Claims Act by providing authority to settle claims on the same basis as is currently afforded to U.S. attorneys.

32. At each VA medical center at which significant medical research is carried out, authorize the establishment of a nonprofit corporation in order to provide a funding mechanism for monies received from other than VA appropriations to conduct approve research projects. No such corporation may be established after September 30, 1991.

33. Modify the administration of the program of VA construction grants to State Homes so as to (a) change from July 1 to August 15 the date for establishing a list of approved projects in the order of their priority; (b) authorize a conditional awards of grants (but no payments until all requirements are actually met) if the application is sufficiently complete to warrant such an award and the State has provided adequate assurances that the project application will meet all remaining requirements by a specified date not later than 90 days after the conditional award; (c) require the rescission of a conditional grant award if the application is not completed by the specified date; and (d) authorize an increase in the amount of any grant by 10 percent (but not to an amount in excess of 65 percent of the overall cost of the project) if VA determines both that the estimated cost of construction or acquisition has increased from the estimated cost on which the grant approval was based and that the grant was awarded before the State entered into a construction contract.

34. Prohibit VA from declaring as excess to VA needs or from taking any other action to dispose of certain real property at two medical centers in California.

35. Prohibit VA from taking any action in a fiscal year to declare any interest in real property as excess to its needs unless, at the time the President's budget for that year is submitted, VA has provided the Congressional Committees on Veterans' Affairs with a proposal to do so; require that VA receive fair market value for any such property; and require that revenues from any such transfer be deposited in a new VA Nursing Home Construction Revolving Fund established under this measure.

36. Modified provisions relating to Veterans' Affairs Committees' resolutions approving certain major VA medical-facility construction and acquisition projects so as to (a) permit a point of order to be raised against a bill providing an appropriation for such a project unless the project has been approved (in an amount no less than the amount of the appropriation) by a resolution of the Veterans' Affairs Committee of the body in which the bill is being considered, and (b) require that the Committee be given 30 days advance notice whenever the cost of a project would exceed by more than 10 percent the amount specified in the Committee's resolution.

37. Prohibit the contracting out of certain functions at VA health-care facilities unless there are at least two responsible, financially autonomous bidders.

38. Require VA to develop and implement by October 1, 1989, a plan for the standardization of medical and pharmaceutical items procured by VA.

39. Place certain limitations on VA procurement of medical and pharmaceutical items through local contracts.

40. Authorize VA to use multi-year contracts for the procurement of health-care supplies and services.

41. Require the Secretary of the Treasury to return to VA's Special Therapeutic and Rehabilitative Activities Fund and its Canteen Service Revolving Fund amounts sequestered in FY 1986 under the Gramm-Rudman-Hollings law.

Health-Care Personnel

42. Authorize VA to use its title 38 appointment, pay, and promotion authorities in the cases of VA pharmacists and occupational therapists, who are employed under the title 5, civil service personnel system.

43. Authorize Va, at facilities which are determined to have a significant shortage of registered nurses (RNs) in any clinical service, to enter into recruitment and retention bonus agreements with RNs under which they would receive up to $2,000 per year for an agreement to work 2 years; $3,000 per year for an agreement to work 3 years; and, $4,000 per year for 4 years. VA is authorized to enter into such bonus agreements with individuals in certain other health professions in which VA is experiencing significant recruitment and retention problems.

44. Authorize VA to use its title 38 "on call" pay authority for its title 5 health-care personnel, but protect the title 5 "standby" pay of employees for whom such pay is more advantageous.

45. Require the payment of premium pay for Saturday work for VA registered nurses on the same basis as current law provides for premium pay for their Sunday work.

46. Make eligible for Senior Executive Service bonuses and rank awards persons appointed to executive positions in the VA health-care system who are not physicians or dentists.

47. Clarify that, in the cases of VA health-care personnel appointed under VA's "hybrid" title 5/title 38 authority, all matters relating to adverse actions, disciplinary actions, and grievance procedures be resolved in accordance with title 5 provisions.

48. Authorize waivers of State licensure and registration requirements for practical and vocational nurses and physical therapists where they are employed either in research or academic work not involving direct patient-care responsibilities or outside the U.S. in a country where they are licensed.

49. Authorize the waiver of the 1-year internship requirement for psychologists where they are employed in research or academic work not involving direct patient-care responsibilities.

50. Require VA to submit by May 20, 1989, a report on (a) the effects of certain health-care personnel pay and benefits provisions enacted in this legislation, and (b) a study of various health-care personnel recruitment and retention issues, including the effects that flexible employee benefits programs would have.

51. Establish a tuition-reimbursement program for full-time VA employees seeking a degree with a major in nursing, with special emphasis on increasing the number of registered nurses in VA. Participants are required to work for VA for a period of one year following completion of their last course, and those not fulfilling that obligation are required to repay the sums expended by VA for their training, prorated to reflect the time remaining in their agreement.

52. Expanded eligibility for the Health Professional Educational Assistance Program Scholarship Program to include training for all disciplines which provide direct patient care or services incident to direct patient care and require that priority be given to those in their final year of training.

53. Provide that noncareer research personnel in VA are not to be counted for purposes of any personnel ceiling imposed by the President or an executive branch official.

54. Require that Chiefs of the nursing Service be members of all policy-making and fiscal committees at VA health-care facilities.

55. Required VA to submit, not later than August 1, 1988, a report on VA activities to promote increased efforts by affiliated schools in training health-care professionals to care for older patients and in research into the aging process.

56. Provide that persons employed by the Canteen Service are not to be considered VA personnel for purposes of any personnel ceiling imposed by the President or an executive branch official.

57. Designate the Veterans' Administration Medical Center in Shreveport, Louisiana, the "Overton Brooks Veterans' Administration Medical Center".

At its June 9, 1988, hearing, the Committee received testimony on S. 2105 and on June 16, 1988, the Committee held a hearing on health-care measures, including S. 2207, S. 2294, S. 2393, S. 2462, S. 2463, and S. 2446. Testimony was received from VA, various veterans' organizations, certain health-professional associations, and other concerned organizations.

After carefully reviewing the testimony, the Committee met in open session on June 29, 1988, and voted unanimously to report S. 2011 with an amendment in the nature of a substitute incorporating, in title VI thereof, provisions derived from the above-mentioned bills.

As reported (S. Rept. 100–439) on August 1, 1988, S. 2011 contained numerous provisions to improve VA health programs.

On October 18, 1988, the Senate agreed to S. 2011 as reported, with further amendments adopted on the floor of the Senate, and passed H.R. 4741 with a substitute amendment incorporating the text of S. 2011 as amended. On October 19, the House passed S. 11 with an amendment incorporating (in Division B thereof) the provisions of S. 2011 as passed by the Senate and further amended by the House to incorporate the provisions of a compromise agreement between the House and Senate Committees on Veterans' Affairs with respect to S. 2011 and various other measures relating to VA benefits and services. The Senate passed this final version of S. 11 on October 20 and the President signed it into law on November 18, 1988, as Public Law 100–322, Division B of which is known as the Veterans Benefits Improvement Act of 1988.

Division B of Public Law 100–687 included health-care provisions which:

1. Authorize VA, after giving 30 days' notice to the Congressional Committees on Veterans' Affairs, to move a Vietnam-era readjustment counseling center (Vet Center) from one community-based location to another without regard to statutory limitations enacted in Public Law 100–322 if the move is necessitated by conditions beyond VA's control.

2. Authorized the intra-community relocation of 17 specific Vet Centers.

3. Extended for one year, to September 30, 1990, the authority for certain grants to the Veterans' Memorial Medical Center in the Philippines, with an authorization of appropriations of $1 million for such grants and require reports on the use of grant funds and on the furnishings of health-care services to U.S. veterans in the Philippines.

4. Made technical corrections in certain provisions enacted in Public Law 100–322 so as to—

(a) clarify the outpatient contract care eligibility of veterans who have service-connected disabilities rated at 30 or 40 percent, who have incomes at or below the VA pension standard, who are ex-POWs or World War I veterans, or who are in receipt of VA compensation or pension aid-and-attendance or housebound benefits;

(b) delete the inadvertent provision for certain other contract care; and

(c) specify that VA may utilize the hybrid title 5/title 38 authority to employ pharmacists and occupational therapists in less-than-permanent, full-time positions; and

(d) clarify that participants in VA's tuition-reimbursement program who do not maintain VA employment while pursuing a course being paid for by VA are liable for amounts paid or payable by VA on their behalf and not for treble damages.

5. Require VA to transfer to the State of Tennessee certain real property at the Alvin C. York VA Medical Center for use as a State Veterans' Home nursing care facility if the State has provided adequate assurances regarding the availability of resources to construct and operate the facility. The transfer was required to be made subject to reversion back to the United States if the property were ever used for a different purpose and to such other conditions as VA considers appropriate to protect the United States' interests.

6. Authorize VA to transfer land which is excess to its needs to a State for use as a State Veterans' Home nursing or domiciliary care facility if—

(a) the State has provided adequate assurances regarding the availability of resources to construct and operate the facility; and

(b) VA has provided the Congressional Committees on Veterans' Affairs with 90-days advance notice before June 1 of the year in which the transfer is to be made or of the preceding year.

7. Provide for the conversion of non-physician VA hospital directors from title 38 appointments to the Senior Executive Service with no reduction in pay, but permit any such director to elect,

within 60 days after the date of enactment, to decline to be converted.

8. Postponed until May 20, 1989, certain restrictions enacted in Public Law 100–322 on the procurement of health-care items through local contracts; postponed for four years, until December 1, 1992, certain detailed reporting requirements with respect to local procurements; and provide for less-detailed interim annual reports on such procurements.

On October 12, 1988, the House of Representatives passed S. 2049, a Senate-passed bill relating to the VA home guaranty program with an amendment in the nature of a substitute which incorporated provisions derived from certain other House- and Senate-passed bill on which the Committees on Veterans' Affairs had reached a compromise agreement.

On October 20, the Senate concurred and the bill was signed into law on Novembr 18, 1988, as Public Law 100–689, the Veterans' Benefits and Programs Improvement Act of 1988.

Public Law 100–689 included provisions which:

1. Extended for 3 years, until September 30, 1991, VA's authority to contract with halfway houses and other community-based residential facilities for treatment and rehabilitation of veterans with alcohol or drug abuse disabilities.

2. Require VA to conduct, during December 1, 1988, through October 1, 1997, an ongoing evaluation of the effectiveness of its contract residential drug and alcohol treatment programs, with an interim report due February 1, 1993, and a final report due March 31, 1998.

VI. Educational Benefits

A. OVERVIEW

VA readjustment benefits consist of various types of educational assistance for eligible veterans, dependents, and survivors. The main purposes of such assistance are to help the veteran readjust to civilian life in a productive capacity, to compensate for the loss of educational or vocational opportunities during the veteran's period of service to the Nation, to provide an incentive for military service, and to provide vocational rehabilitation opportunities to those whose ability to obtain employment has been impaired as a result of service-connected disability.

Educational assistance is also provided by the VA to dependents of veterans with permanent and total service-connected disabilities and to the survivors of those whose deaths are service connected. Such assistance to these survivors and dependents is intended to compensate for service-connected impairment of the veteran's ability to bear the cost of education of his or her family members and, in the case of the veteran's death, to assist the surviving spouse in attaining economic self-sufficiency.

Vocational rehabilitation opportunities are provided under chapter 31 of title 38, United States Code, to service-connected disabled veterans. Under chapter 34 of title 38, educational assistance is provided to eligible Vietnam-era veterans and to other veterans and servicepersons who served during the period beginning February 1, 1955, and ending December 31, 1976, who are otherwise eligi-

ble. Survivors and dependents of veterans whose deaths or permanent and total disabilities are service connected are eligible for educational assistance under chapter 35. Under chapter 32, post-Vietnam-era veterans (those entering the service after December 31, 1986, and otherwise eligible) are entitled to participate in an educational assistance program wherein participants contribute up to $2,300 to an education account. These contributions are then matched by the Department of Defense on a two-for-one basis when the veteran enrolls in an approved course of education. Under chapter 30 of title 38, educational assistance is provided to members of the All-Volunteer Force who first entered active duty after June 30, 1985, and did not elect not to participate in this program. The rate of basic pay of those who participate is reduced by $100 for each of the 12 months of their active-duty service.

In addition, VA administers a program of educational assistance under chapter 106 of title 10, funded by the Departments of Defense and Transportation, of educational assistance for members of the selected reserve.

Of the estimated 456,300 persons pursuing education or training under VA-administered programs in FY 1989, 159,700 are veterans and servicepersons receiving benefits under chapter 34; 41,900 are spouses, surviving spouses, sons and daughters receiving benefits under chapter 35; 23,200 are service-disabled veterans enrolled in rehabilitation under chapter 31; 88,600 are post-Vietnam-era veterans and servicepersons participating in training under chapter 32; 25,800 are All-Volunteer Force servicepersons and veterans receiving benefits under chapter 30; and 117,400 are reservists receiving benefits under chapter 106 of title 10.

B. FIRST SESSION

On February 4, 1987, the Committee held a hearing on S. 12, a bill to provide for the indefinite continuation of the New GI Bill program under chapter 30 of title 38 and chapter 106 of title 10, by repealing the June 30, 1988, deadline by which an individual was required to enter on active duty or make a specified commitment to Selected Reserve service, respectively, in order to be eligible to participate. Testimony was received from VA and Department of Defense witnesses, various veterans' organizations, military service associations, representatives from the higher education community, and others.

After carefully considering the testimony, the Committee met in open session on February 25, 1987, and voted unanimously to report S. 12 favorably with an amendment in the nature of a substitute.

As reported on March 17, 1987 (S. Rept. 100–13), S. 12 provided for the indefinite continuation of the New GI Bill.

On May 8, 1987, the Senate agreed to the provisions of S. 12 as reported and passed H.R. 1085 with an amendment in the nature of a substitute incorporating the text of S. 12 as reported.

On May 13, the House concurred in the Senate amendment with an amendment incorporating a compromise agreement between the House and Senate Committees on Veterans' Affairs and the Senate concurred in the House amendment. The bill was signed into law

on June 1, 1987, as Public Law 100–48, the New GI Bill Continuation Act.

Public Law 100–48 contained provisions which:

1. Rename the legislation by which the New GI Bill was originally enacted (title VII of Public Law 98–525) as the Montgomery GI Bill Act of 1984.

2. Provided for the indefinite continuation of the Montgomery GI Bill programs by repealing the above-mentioned June 30, 1988, deadline.

3. Modify the Congressionally-stated purposes of the Montgomery GI Bill to include (a) extending the benefits of higher education to persons who might not otherwise be able to afford such an education; (b) providing for the vocational readjustment and restoring lost educational opportunities to those who serve after June 30, 1988; and enhancing the Nation's competitiveness through the development of a more highly educated and productive work force.

On April 30, 1987, the Committee held a hearing at which testimony was received on S. 918 and other legislation relating to veteran's educational assistance programs from VA and various veterans' organizations.

Provisions derived from S. 918 were included in S. 9 as reported on November 6, 1987, but were not enacted in the First Session.

C. SECOND SESSION

Provisions derived from S. 918 were ultimately enacted on May 20, 1988, in Public Law 100–322 (see the description of the legislative history of Public Law 100–322 in the discussion of Part V, Health Care, above).

With respect to VA educational assistance programs, Public Law 100–322 included provisions which:

1. Require VA to consider two 50-minute laboratory periods per week of laboratory instruction as the equivalent of one quarter or one semester hour or one standard class session.

2. Provide that the Administrator may waive annual compliance surveys of institutions offering one or more courses approved for eligible veterans in the case of an institution with a demonstrated record of complicane with the applicable requirements for education programs under title 38.

On May 25, 1988, the Committee held a hearing on veterans' educational assistance legislation—S. 1997, S. 2307, S. 2383, and S. 820. Testimony was received from representatives of VA, various veterans' organizations, associations of military personnel, the education community, and other concerned organizations.

After carefully considering the testimony, the Committee met in open session on June 29, 1988, and ordered S. 2011 reported with provisions in title III derived from the above-mentioned bills. On October 18, 1988, the Senate agreed to those provisions and passed S. 11, as amended by the House, with an amendment in the nature of a substitute incorporation in title III thereof the provisions of title III of S. 2011 as reported.

On October 12, the House passed S. 2049 with an amendment in the nature of a substitute incorporating in titles I and II a compromise agreement between the House and Senate Committees on

Veterans' Affairs on the provisions of title III of S. 2011 as reported and House provisions relating to VA education and vocational rehabilitation programs. On October 20 the Senate concurred with the House amendments, and S. 2049 was signed into law on November 18, 1988, as Public Law 100-689, the Veterans' Benefits and Program Improvement Act of 1988.

Public law 100-689 contains in titles I and II provisions which:

1. Provide a death benefit to certain survivors of a Montgomery GI Bill (MGIB) participant who dies from service-connected causes while serving on active duty. The benefit amount equals the total amount by which from the participant's basic pay was reduced under the program, minus any amount of MGIB benefits paid to the participant.

2. Provide entitlement to education benefits for an MGIB participant who is discharged due to a pre-existing medical condition and, as a result, does not meet the length-of-service requirements for entitlement. Entitlement is provided at a rate of one month of educational assistance for each month of continuous active duty served by the participant after June 30, 1985.

3. Provide entitlement to education benefits for an MGIB participant who is discharged involuntarily for the convenience of the Government as a result of a reduction in force and, as a result, does not meet the length-of-service requirements for entitlement to benefits. Entitlement is provided as a rate of one month of educational assistance for each month of continuous active duty served by the participant after June 30, 1985.

4. Provide that during the period beginning December 1, 1988, and ending June 30 1989, an active-duty non-MGIB participant who is serving on active duty and who first became a member of the Armed Forces or first entered on active duty between June 30, 1985 and July 1, 1988, will have the opportunity, using a form to be prescribed by the Secretary of Defense, to withdraw his or her election not to participate in the MGIB.

5. Require that servicemembers with Vietnam-Era GI Bill eligibility who served on active duty from October 19, 1984, through June 30, 1988, must have received a secondary school diploma or an equivalency certificate by December 31, 1989, in order to be eligible to receive MGIB benefits after December 31, 1989.

6. Provide for payment of benefits for refresher, remedial, and deficiency courses under chapter 30, the MGIB for active-duty personnel and veterans, chapter 32, the Post-Vietnam Era Veterans' Educational Assistance Program, and chapter 35, Survivors' and Dependents' Educational Assistance Program.

7. Provide for the payment of tutorial assistance benefits under chapters 30 and 32 and increase the monthly maximum tutorial assistance benefit from $84 to $100 and maximum total benefit from $1,008 to $1,200.

8. Provide for the payment of cooperative training benefits under chapters 30 and 32.

9. Provide that, for the purposes of any provision relating to the extension of a delimiting period under any VA education benefit or rehabilitation program, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct.

10. Permit individuals training under the Montgomery GI Bill—Selected Reserve program (chapter 106 of title 10) to attend school on a less than half-time basis.

11. Repealed the requirement that an individual complete 180 days in the Selected Reserve before receiving educational assistance under chapter 106.

12. Provide a one-time opportunity for a student who is using VA education benefits to withdraw from a course or courses which are not used in computing requirements for graduation (not exceeding 6 semester hours or the equivalent) without being required to repay benefits retroactively to the beginning of the term.

13. Eliminate or reduce benefit payments to incarcerated veterans participating in the chapter 32 program in accordance with the principles applicable to incarcerated veterans under other VA programs of educational assistance.

14. Extended the existence of the Veterans' Advisory Committee on Education from December 31, 1989, until December 31, 1993.

15. Expand the training opportunities for service-connected disabled veterans in VA vocational rehabilitation programs to include unpaid training for work experience with—in addition to Federal agencies—State or local government agencies receiving Federal financial assistance.

16. Authorize the use of for-profit organizations to provide employment assistance to certain service-disabled veterans and for conducting programs of independent living services for severely disabled veterans when the Administrator determines that the assistance cannot be obtained, or obtained cost-effectively, from public or non-profit entities.

17. Made permanently exempt from sequestration under the Gramm-Rudman-Hollings law the chapter 31 program of rehabilitation for certain veterans with service-connected disabilities and the chapter 35 program of educational assistance for the dependents or survivors of certain service-disabled veterans.

VII. Employment

A. Overview

The Department of Labor has primary responsibility for the implementation of statutory provisions in regard to veterans' employment. Section 2002 of chapter 41—Job Counseling, Training, and Placement Service for Veterans—in title 38, states congressional intent with respect to veterans' employment programs operated through the Department of Labor's Veterans' Employment and Training Service (VETS) as follows: "The Congress declares as its intent that there shall be an effective (1) job and job training counseling program, (2) employment placement service program, and (3) job training placement service program for eligible veterans and eligible persons. . . ." Chapter 42 of title 38 provides for the employment and training of disabled and Vietnam-era veterans. Specifically, section 2012 requires certain Federal contractors, and certain of their subcontractors, to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. Section 2014 provides for Veterans' Readjustment Appointments (VRAs) within the Federal Government.

The purpose of the VRA authority is to assist certain disabled and educationally disadvantaged Vietnam-era veterans by making it possible for them to be hired noncompetitively up to a certain grade level (GS–9 or its equivalent). After 2 years of successful performance, the veterans' civil service status is converted to career conditional. Chapter 43 of title 38 provides re-employment protection to certain veterans.

The Office of Personnel Management has responsibility to implement the policy of the United States to promote the maximum employment and job advancement opportunities within the Federal Government for qualified disabled veterans and veterans of the Vietnam era.

B. FIRST SESSION

On April 30, 1987, the Committee held a hearing on Amendment No. 160 to S. 999, legislation to make improvements in veterans' employment and job training programs. Testimony was received from VA, the Department of Labor, various veterans' organizations, and employers participating in the Veterans' Job Training Act (VJTA) program.

After carefully reviewing the testimony, the Committee met in open session on May 14, 1987, and voted unanimously to report S. 999 with an amendment in the nature of a substitute incorporating provisions derived from Amendment No. 160 and amendments proposed by Committee members at the meeting.

As reported on July 28, 1987 (S. Rept. 100–128), S. 999 was designed to improve the provision of employment, counseling, job-training, and related services, assistance, and opportunities for veterans through the revision of chapter 41 of title 38 and the VJTA.

On August 4, 1987, the Senate agreed to S. 999 as reported and passed H.R. 1504 with an amendment in the nature of a substitute incorporating the text of S. 999. On December 19, 1987, the Senate, by unanimous consent, vitiated the action by which S. 999 had been postponed on August 4 and passed S. 999 as reported. There was no further action on this legislation in the First Session.

C. SECOND SESSION

On April 27 and 28, 1988, the House and Senate, respectively, passed S. 999 with an amendment in the nature of a substitute incorporating a compromise agreement between the Committees on Veterans' Affairs on the provisions of S. 999 and the House-passed H.R. 3460. The bill was signed into law on May 20, 1988, as Public Law 100–323, the Veterans' Employment, Training, and Counseling Amendments of 1988.

Public Law 100–323 contains provisions which:

1. Require that the Secretary of Labor's administration of veterans' employment, training and related programs (including reemployment rights) be through the Assistant Secretary for Veterans' Employment and Training (ASVET).

2. In order to maximize the use of available resources, encourage veterans' employment and training programs and grantees thereunder to enter into cooperative arrangements with businesses, schools, trade associations, and unions.

3. Require the ASVET to coordinate and consult with the Administrator of Veterans' Affairs with respect to programs conducted under title 38.

4. Require that the Secretary of Labor, beginning with FY 1988, make available to the States (including the District of Columbia, Puerto Rico, and the Virgin Islands) funds sufficient to support the assignment of 1,600 full-time Local Veterans' Employment Representatives (LVERs) nationwide.

5. Require the allocation of the funding necessary to support the States' administration of the LVER program so that (a) each State receives funding for the number of LVERs it had on January 1, 1987, for which funds were provided under chapter 41 (1,379 LVERs according to the Department of Labor) plus one additional LVER; and (b) the allocation of funds for the remaining LVER positions up to 1,600 be made pursuant to a formula whereby each State would receive a percentage of those funds equal to the average of (1) the State's percentage of total national veteran population, (2) the percentage of the total of eligible veterans and persons registered with Local Employment Security Offices (LESOs) nationwide who are registered with LESOs in the State, and (3) the State's percentage of the number of full-service LESOs nationwide; and (c) each State's allocation also include funds for the reasonable administrative expenses associated with the number of LVERs for which it is receiving funds.

6. Make the distribution and use of funds provided to a State for LVERs to be subject to the supervision and monitoring of the ASVET.

7. Require the ASVET to promote and monitor participation of qualified veterans and eligible persons in employment and training opportunities under the Job Training Partnership Act and other federally funded employment and training programs.

8. Require the Secretary of Labor to monitor compliance with applicable provisions of title 38 relating to the appointment of disabled veterans' outreach program specialists (DVOPs) and assignment of LVERs.

9. Require the Secretary of Labor to assign to each region for which the Secretary operates a regional office of representative of the VETS to serve as Regional Administrator for Veterans' Employment and Training with specified responsibilities relating to veterans' employment and training services and rights.

10. Modified the statutory requirement for the Secretary to include in the Department of Labor's annual budget the funding necessary for the numbers of DVOPs required by the DVOP funding formula so as to require that (a) the budget include funding for (1) LVERs in accordance with the new LVER funding formula, (2) the National Veterans Employment and Training Services Institute (NVETSI, discussed in item 20 below), and (3) the reasonable expenses of DVOPs and LVERs for training, travel, supplies, and fringe benefits, including travel expenses and per diem for attending the NVETSI, and (b) the budget submission include (1) a separate listing of LVERs by State, and (2) information demonstrating the compliance of the budget submission with the funding formulas for DVOPs and LVERs and the requirement to provide funding for the NVETSI.

11. Require that not later than February 1 of each year the Secretary of Labor report to the House and Senate Committees on Veterans' Affairs on the success during the preceding year of the Department of Labor and its affiliated State employment service agencies in carrying out the provisions of chapter 41 and programs for the provision of employment and training services to meet the needs of specified categories of eligible veterans and eligible persons.

12. Repeal the authority for the use of funds available for chapter 41 use for non-chapter 41 purposes.

13. Require that the LVERs allocated to each State be assigned to LESOs by the administrative head of the State employment agency (SEA)—after consultation with the Director of Veterans' Employment and Training in the State—so that as nearly as practicable each LESO with at least 1,100 registrants would have a full-time LVER; one additional LVER would be assigned for each 1,500 additional registrants above the initial 1,100 registrants; and one half-time LVER would be assigned to each LESO at which at least 350 but less than 1,000 such individuals are registered. At a LESO with fewer than 350 registrants, and at any other Wagner-Peyser Act employment services delivery point, the head of the office or delivery point would be responsible for ensuring compliance with provisions in existing law requiring priority services for veterans and priority referral of veterans to Federal contractors.

14. Require that, in the assigning of LVERs after June 30, 1988, preference be given first to qualified service-connected disabled veterans, then to other qualified eligible veterans, and then to qualified eligible veterans.

15. Modified in various ways and clarified the specific duties of LVERs.

16. Require each State employment agency (SEA) to develop and apply standards for the performance of DVOPs and LVERs consistent with the duties and functions specified in chapter 41, title 38, United States Code, and include as a measure of a DVOP's performance the extent to which the DVOP, as a VJTA case manager, facilities successful VJTA training-completion rates. In developing the standards, each SEA is required to take into account model standards (which the Secretary of Labor would be required to develop after consulting with the SEAs or their representatives) and any comments of the Director of veterans Employment and Training concerned and certain local circumstances and requirements.

17. Authorize the Secretary of Labor, in appointing a Director of Veterans Employment and Training (DVET), or Assistant DVET (ADVET), for a State to waive the statutory requirement of 2 years residence in the State if no qualified veteran available for appointment meets the requirement.

18. Expand and clarify the responsibilities of DVETs to include functional supervision of the provision of services to eligible veterans and eligible persons by the employment service system and other pertinent programs; monitoring the implementation of veterans preference in Federal agencies; and monitoring Federal agencies listing job vacancies with the U.S. Employment Service.

19. Clarified and expanded the responsibilities of DVOPs to include the provision of certain vocational guidance or vocational

counseling services to veterans and the provisions of services as case managers under VJTA.

20. Require the Secretary of Labor to establish and provide necessary funds to operate a National Veterans' Employment and Training Services Institute for the training of DVOPs, LVERs, and other personnel involved in the provision of employment, job-training, counseling, placement or related services to veterans.

21. Require the Secretary of Labor, through the Bureau of Labor Statistics, to conduct, on a biennial basis, studies of unemployment among special disabled veterans and veterans who served in the Vietnam Theater during the Vietnam era.

22. Broadened the membership on the Secretary of Labor's Committee on Veterans' Employment to include a representative of the Secretary of Education, the Postmaster General, and any other agency which has had its request to have a representative on the committee approved by the Secretary.

23. Require that—except where the Secretary of Labor determines that an employer has a qualifying employee assistance program or, upon a DVOP's recommendation, that a case manager is not needed for a particular veteran—the Secretary assign a DVOP as a case manager for each VJTA participant.

24. Require that VJTA case managers make certain periodic contacts with the participants assigned to them in order to help ensure the veterans' successful participataion in their VJTA job-training programs.

25. Require that, before a veteran who has failed to complete a VJTA program is eligible for a new or renewed eligibility certificate, the veteran be provided either with vocational counseling or a case manager.

26. Modify the existing requirements for the Department of Labor to provide certain information, counseling and other services for veterans participating in VJTA so as to (a) require that this function be carried out jointly by Labor and VA, (b) link to certain title 38 programs of outreach, counseling, and other services the services relating to efforts to resolve difficulties encountered by veterans in VJTA training, and (c) specify that certain means be used to inform VJTA participants of the services available to them.

27. Require VA to provide a program of job-readiness skills development designed to assist veterans in participating in suitable VJTA programs and provide for this skills-development program to be funded through the VA readjustment benefits account within certain limits (generally not more than 5 percent of VJTA obligations for the fiscal year concerned).

28. Require the Administrator to disapprove new enrollments in an employer's program of training under VJTA if the Administrator determines that the rate of veterans' successful completion of the employer's program is disproportionately low because of deficiencies in the quality of the program.

29. Authorize VJTA appropriation of $60 million for each of FYs 1988 and 1989 and provide for the availability of funds through the end of FY 1991.

30. Extended the deadline by which a veteran must apply to participate in a VJTA program to September 30, 1989.

31. Extended the deadline by which a veteran participant in VJTA must enter into a job-training program to March 31, 1990.

32. Provide that any VJTA funds that are obligated for the purpose of making payments to an employer and are subsequently deobligated immediately become available for reobligation.

33. Require the Secretary of Labor, not less often than quarterly, to collect certain data regarding (a) the numbers veterans receiving counseling under the VJTA, referred to VJTA employers, participating in VJTA job-training programs, and completing such programs, and (b) the reasons for veterans' non-completion.

34. Require the Administrator to conduct, and submit to the appropriate Congressional Committees by May 20, 1989, an indepth study on the implementation of VJTA.

35. Transfer from VA's general operating expenses account to its readjustment benefits account funding for the reimbursement of State Approving Agencies (SAAs) for their expenses of approving courses of education and programs of on-job training for purposes of VA education benefits; require VA to reimburse SAAs on a timely basis for their reasonable and necessary expenses up to an overall annual cap of $12 million; and establish certain SAA and VA reporting requirements.

36. Require the Administrator (a) to conduct in conjuction with the SAAs an annual evaluation of each SAA on the basis of standards developed by the Administrator in cooperation with the SAAs; (b) take the results of these evaluations into account in negotiating the terms of SAAs' contracts; (c) supervise functionally the SAAs' provision of approval services; (d) cooperate with SAAs in developing and implementing a uniform national curriculum for SAA employee training; and (e) develop in conjunction with SAAs and prescribe model qualification and performance standards for SAAs' use in developing such standards for their personnel.

37. Require each SAA (a) to develop and apply qualification and performance standards based on the model developed by the Administrator, which may be modified to take into account local circumstances, and (b) make available upon request the criteria used by the SAA in carrying out its approved function.

38. Expanded the Commission on Veterans' Education Policy membership to include the Assistant Secretary of Defense for Force Management and Personnel as an ex officio, non-voting member.

VIII. Home Loan Guaranty Program

A. OVERVIEW

The VA Home Loan Guaranty Program is designed to encourage and facilitate extension of favorable credit terms by private lenders to veterans for the purchase, construction, or improvement of homes to be occupied by veterans and their families. The program operates by providing lenders with the Federal Government's guaranty of repayment of portion of the loan amount. This guaranty provide lenders with protection against loss similar to that afforded under conventional mortgages terms by substantial downpayments and relatively shorter loan terms. Eligible veterans are thus able to finance home purchases even though they may not have the resources to qualify for conventional loans.

Veterans other than service-connected-disabled veterans are charged a 1-percent loan origination fee by VA. Under present law, home loans may be guaranteed up to 50 percent of the amount of the loan for loans under $45,000 and up to 40 percent for loans over $45,000, with a maximum guaranty of $36,000 and a minimum of $22,550. In the event of an insoluble default, the VA, through its contract of guaranty, will make good any loss sustained by the holder of the loan, up to the amount of the guaranty. In some cases, VA pays the lender the entire loan amount, accrued interest and foreclosure costs and takes title to the property and resells the property.

B. FIRST SESSION

On February 18 and 19, 1987 (discussed above), and June 17, 1987, the Committee held hearings to consider, among other things, oversight of the VA home loan guaranty program and, at the June 17 hearing, legislation relating to the program. Among the bills considered at the June 30 hearing were S. 9, S. 920, and H. Con. Res. 79. Testimony was received at both hearings from the VA, various service organizations, and housing industry organizations. After reviewing the testimony from the hearings, the Committee met in open session on July 31, 1987, to consider a Committee print of S. 9 with an amendment in the nature of a substitute incorporating in part C of title I of S. 9 provisions pertaining to the home loan guaranty program. The Committee voted unanimously to report S. 9 with an amendment in the nature of a substitute incorporating the provisions of the Committee print.

On October 16, 1987, the Committee voted to introduce as a separate bill—S. 1801—and report favorably to the Senate the provisions pertaining to the home loan guaranty program contained in part C of title I of S. 9.

On October 30, 1987, the Senate agreed to S. 1801 as reported (S. Rept. 100–204), and passed H.R. 2672 with an amendment in the nature of a substitute incorporating the text of S. 1801.

On November 17, 1987, the House concurred in the Senate amendment with an amendment incorporating a compromise agreement between the House and Senate Committee on Veterans' Affairs and the Senate concurred in the House amendment on December 4, 1987. The bill was signed into law on December 21, 1987, as Public Law 100–198, the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987.

Public Law 100–198 includes provisions which:

1. Extended the 1-percent loan fee until September 30, 1989.

2. Clarified that the exemption from the loan fee for veterans receiving or entitled to receive VA compensation, and surviving spouses of veterans who died from a service-connected disability contained in current law also includes surviving spouses who themselves are veterans.

3. Changed the maximum VA conventional loan guaranty from 60 percent up to a maximum of $27,500 to 50 percent for loans under $45,000, and 40 percent for loans over $45,000, with a maximum guaranty of $36,000 and a minimum guaranty of $22,500, effective with respect to loan guaranty commitments issued after De-

cember 31, 1987, and loans for which settlement occurs after January 31, 1988.

4. Changed the maximum VA loan guaranty for a mobile home, mobile home lot, or mobile home and lot from 50 percent of the loan amount up to $20,000 to 40 percent not to exceed $20,000, effective with respect to loans approved by the VA for which guaranty commitments are issued after December 31, 1988, and limit loans for mobile home, mobile home lot, or mobile home and lot to 95 percent of the purchase price.

5. Require VA for 3 years beginning March 1, 1988, upon receipt of a 90-day default notice from the lender to provide the veteran with information regarding alternatives to forceclosure appropriate to the veterans' particular circumstances such as the availability of counseling, the liabilities of VA and the veteran in the event of foreclosure, and possible methods of curing the default and, to the extent possible, counseling. This requirement would not apply with respect to loans made by lenders the Administrator has determined have demonstrated a record of consistently providing veterans with such information on a timely basis.

6. Modified the formula ("no-bid formula") for determining, based on what is financially advantageous for the Federal Government, whether the VA acquires a foreclosed property securing a VA-guaranteed loan at the liquidation sale or pays the lender under the guaranty to exclude from such calculation, effective for FYs 1989 and 1990, interest accruing during a period of substantial delay in the sale of the property caused by VA-requested forbearance or by VA or resulting from a voluntary bankruptcy case under title II of the United States Code, with such interest included in the payment to the lender in cases of VA-requested forbearance where VA does not acquire the property.

7. Increased effective during FYs 1988, 1989, and 1990, the proportion of acquired foreclosed properties which VA is required to sell for cash rather than by vendee loans from at least 25 percent but not more than 40 percent to at least 35 percent but not more than 50 percent.

8. Limit, effective with respect to loans made more than 30 days after the date of enactment and until September 30, 1990, vendee loans made to purchases of VA foreclosed properties to 95 percent of the purchase price of the property, with the Administrator authorized to waive this 5-percent downpayment requirement when the loans include an amount for rehabilitation of the property.

9. Authorize the Administrator, effective with respect to loans made more than 30 days after the date of enactment and until September 30, 1990, to increase vendee loans to prospective purchasers of VA foreclosed property by an amount necessary for and to be used only for purposes of rehabilitating the property, with the Administrator required to submit a report on the program to the Committees on Veterans' Affairs by March 1, 1990.

10. Revised the requirements relating to refinancing VA-guaranteed loans to:

(a) Provide, effective with respect to loans made more than 30 days after the date of enactment, as an alternative to the requirement that the veteran occupy the home at the time of refinancing that the veteran may certify that he or she previously occupied the

home or, in the case of an active-duty military service member who is unable to occupy the home because of such status, that the spouse occupy or may certify that he or she previously occupied the home.

(b) Modify, effective with respect to loans made more than 30 days after the date of enactment, the restriction limiting the maximum term of an interest-rate-reduction conventional housing loan to the remaining term of the loan being refinanced to permit such loans to be made for a term equal to the remaining term of the loan plus 10 years.

(c) Require, effective with respect to loans for which commitments are made more than 60 days after the date of enactment, that the amount of an equity-payout refinancing loan be limited to 90 percent of appraised property value.

11. Provide, effective with respect to loans made more than 30 days after the date of enactment, as an alternative to the requirement that the veteran occupy the home at the time of refinancing, in the case of an active-duty military service member who is unable to occupy the home because of such status, that the spouse occupy or certify that he or she previously occupied the home.

12. Authorize VA, during FYs 1988, 1989, and 1990, to sell VA-acquired properties for use as shelters primarily for homeless veterans and their families to any nonprofit organizations or any State or political subdivision thereof, for such consideration as the Administrator determines to be in the best interests of homeless veterans and the Federal Government, and only when the Administrator determines that such a sale would not adversely affect the home loan program and the solvency of the Loan Guaranty Revolving Fund.

13. Authorize, for FYs 1988, 1989, and 1990, VA to sell VA-acquired foreclosed properties for a minimum of 75 percent of fair market value where the purchaser agrees to use veterans in a Veterans' Job Training Act program to rehabilitate the homes and to give veterans a preference in the resale of the rehabilitated properties, and require the Administrator to submit to the Veterans' Affairs Committees a report on this program by March 1, 1990.

14. Effective with respect to loans for which commitments are made on or after March 1, 1988, (a) require that before a VA loan can be assumed by the purchaser of the home, VA or the holder of the loan (in the case of lenders approved by VA to make automatically guaranteed loans, known as "prior approval lenders") evaluate the creditworthiness of the purchaser, using the same standards used to evaluate the creditworthinness of a veteran applying for a VA-guaranteed loan and, if the loan is current and the purchaser is found creditworthy, permit the assumption and automatically release the veteran from liability to the VA, and (b) impose a 0.5-percent fee on the purchaser of the property.

15. Established certain uniform qualifications for VA-approved appraisers.

16. Provide, effective through FY 1990, for direct review of appraisal reports and determination of reasonable value for purposes of determining the value of VA-guaranteed loans by prior approval lenders, subject to VA assigning sufficient personnel to monitor the review process adequately.

17. Exempt VA's Home Loan Guaranty Program from sequestration under Public Law 99-177 as amended by Public Law 100-119—commonly known as Gramm-Rudman-Hollings—and make a technical change in how certain VA rehabilitation and education benefits are to be reduced in the event of sequestration.

18. Require VA to give appropriate consideration to state rather than to regional statistics in evaluating the sufficiency of residual income in determining whether a veteran meets VA underwriting criteria when such state data is available.

19. Require VA to list all VA-acquired foreclosed properties with real estate brokers.

On September 16, 1987, S. 1691 was introduced.

On September 17, the Senate passed S. 1691. On October 1, 1987, the House concurred in the Senate amendment with an amendment in the nature of a substitute incorporating the Senate provisions and adding an additional provision and the Senate then concurred in the House amendment. The bill was signed into law as Public Law 100-136 on October 16, 1987.

Public Law 100-136 contains provisions which:

1. Extended the 1-percent loan origination fee from September 30, 1987, to November 15, 1987.

2. Extended the VA property acquisition ("no-bid") formula from September 30, 1987, to November 15, 1987.

3. Eliminated, effective with respect to sales made from the date of enactment through September 30, 1989, the prohibition against VA selling vendee loans without recourse unless the amount received is not less than the unpaid balance of the loan and require the Administrator of the VA to make certain determinations and consider certain factors before selling such loans.

Under section 4(j) of the Concurrent Resolution on the Budget for Fiscal Year 1988 (H. Con. Res. 93), the Committee was given instructions to report legislation making savings in both budget authority and outlays of $50 million in FY 1988 and $30 million in FY 1989 and savings of $10 million in outlays in FY 1990. Accordingly, on October 19, 1987, the Committee reported to the Senate Budget Committee legislation to make those savings and to make other improvements in the home loan program area, which was included as sections 7001 through 7004 of S. 1920. The provisions of this legislation were included as sections 7001 through 7004 of H.R. 3545, on which a conference report (H. Rept. 100-495) was filed on December 21, 1987 and agreed to by the Senate and House on December 21 and 22, respectively. H.R. 3545 was signed into law on December 22, 1987, as Public Law 100-203, the Budget Reconciliation Act of 1987.

Sections 7001 through 7004 of Public Law 100-203 included provisions which:

1. Eliminate, effective with respect to sales made from the date of enactment through September 30, 1989, the prohibition against the VA selling vendee loans without recourse unless the amount received is not less than the unpaid balance of the loan and require the Administrator of the VA to make certain determinations and consider certain factors before selling such loans.

2. Extended the 1-percent VA loan fee for 2 years, through September 30, 1989.

3. Increased, effective during FYs 1988, 1989, and 1990, the proportion of acquired foreclosed properties which the VA is required to sell for cash rather than by vendee loans from at least 25 percent but not more than 40 percent to at least 35 percent but not more than 50 percent.

4. Clarified statutory construction of certain aspects of the above provisions.

C. SECOND SESSION

On February 1, 1988, S. 2022 was introduced. S. 2022 included provisions to improve the home loan program. The Senate passed S. 2022 and on February 17 the house passed it without amendment. The bill was signed into law on February 29 as Public Law 100–253, the Veterans' Home Loan Program Amendments of 1988.

Public Law 100–253 includes provisions which:

1. Allow the Administrator to waive, in whole or in part, the 5-percent downpayment requirement on vendee loans made to purchase VA foreclosed properties to the extent the Administrator determines such a reduction is necessary in order to market competitively the property involved.

2. Clarify the calculation of the amount of a veteran's guaranty entitlement for conventional and manufactured home loans.

Public Law 100–689 (for legislative history, see above) includes provisions which:

1. Require VA to offer below-market interest rates on vendee loans under circumstances where it is determined that this reduced rate is necessary in order to market foreclosed properties competitively.

2. Impose the creditworthiness requirements and 0.5 percent fee applicable for assumptions of VA guaranteed loans to vendee loans sold by the VA with recourse.

3. Expanded the VA's authority to pay from the Loan Guaranty Revolving Fund certain additional administrative expenses so as to cover supplementary contractual services and equipment purchases.

IX. Claims Adjudication and Judicial Review

A. OVERVIEW

Under the law in effect prior to November 1988, a decision of the Administrator on a claim for benefits was final and generally could not be reviewed by a court. Some courts had permitted review in cases in which constitutional issues were raised or a question was raised as to whether the decision represented action beyond the scope of the Administrator's authority. The preclusion of judicial review, together with a statutory limit of $10 on the amount an attorney could receive for representing an individual with a claim for benefits before VA, combined to leave VA unique among major Federal agencies in the manner in which it administered benefits. In addition, the Administrative Procedure Act (APA) provisions relating to agency rulemaking did not require VA compliance with APA rulemaking procedures of notice and comment.

B. FIRST SESSION

During the First Session of the 100th Congress, the Committee held a joint oversight hearing with the House Veterans' Affairs Committee to investigate questions about VA claims adjudication processes which arose out of litigation (*NARS* v. *Turnage*) which challenged the limit on the amount a claimant before VA could pay an attorney for representation.

C. SECOND SESSION

During the Second Session, on April 28, 1988, the Committee held a hearing on legislation relating to the review of VA decisions on claims—S. 11 and S. 2292. On June 9, 1988, the Committee held an oversight hearing focusing on the operations of the Board of Veterans' Appeals.

After reviewing the testimony from these hearings, the Committee met in open session June 29, 1988, and voted unanimously to report S. 11 with an amendment in the nature of a substitute.

As reported (S. Rept. 100-418) on July 7, 1988, S. 11 contained provisions to establish certain procedures for the adjudication of claims for benefits under laws administered by VA; to apply the provisions of section 553 of title 5, United States Code, to VA rulemaking procedures; to provide for judicial review of certain decisions of the Board of Veterans' Appeals (BVA); and to provide for the payment of reasonable fees to attorneys for rendering legal representation to individuals claiming benefits under laws administered by VA. On July 11, the Senate agreed to S. 11 as reported with an amendment. On October 3, the House passed S. 11 with an amendment which incorporated the test of H.R. 5288. Finally, on October 18, the Senate passed S. 11 with a further amendment which comprised an agreement between the House and Senate Committees on Veterans' Affairs. Because the House added further provisions (unrelated to claims adjudication on October 19, final Senate passage of S. 11 did not occur until October 20. This measure was signed into law on November 18, 1988, as Public Law 100-687. Division A of this law, which is known as the Veterans' Judicial Review Act, included provisions which:

Adjudicative and Rulemaking Authority of the Veterans' Administration

1. Amended section 211 of title 38—which sets forth the general preclusion of judicial review of VA decisions—to expand the present categories of exceptions to that rule and also to clarify that the Administrator must resolve all questions of law and fact necessary to a decision by the Administrator under a law that affects the provision of benefits by the Administrator to veterans or dependents or survivors of veterans (as opposed to resolving any question of law or fact under any law administered by VA providing benefits and their dependents or survivors).

2. Require that, in the application to VA of section 552(a)(1) of title 5, requiring the publication by departments and agencies of certain information in the Federal Register, the Administrator ensure that subparagraphs (C), (D), and (E) of that section, relating

to publication of rules of procedure, forms, and substantive rules of general application, are complied with, particularly with rspect to opinions and interpretations of the General Counsel.

3. Require application of the rulemaking provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553) to any matter relating to loans, grants, or benefits under a law administered by the VA.

4. Provide that an action of the Administrator to which either section 552(a)(1) or 553 of title 5 (or both) applies, other than an action relating to the adoption or revision of the schedule of ratings for disabilities under section 355 of title 38, shall be subject to judicial review in accordance with chapter 7 of title 5 either in the U.S. Court of Appeals for the Federal Circuit, or, if review is sought in connection with an appeal of a BVA decision, in the U.S. Court of Veterans Appeals.

5. Require that, if judicial review of an action described in item 4, above, is sought in connection with an appeal under the provisions of chapter 72 of title 38, the provisions of that chapter would apply rather than those of chapter 7 of title 5.

6. Require the Administrator to submit to the Congressional Committees on Veterans' Affairs, not later than May 1, 1989, a report as to how the Administrator will comply with the provision in the second paragraph, above, relating to publication in the Federal Register of certain information.

7. Codified the burden of proof and reasonable doubt standards in VA claims adjudication proceedings, currently provided for by regulation (38 CFR 3.102 and 3.103).

8. Codified the VA's current practice by requiring the reopening of a previously disallowed claim, upon presentation of new and material evidence, at a VA regional office.

9. Establish a procedure under which the Administrator can obtain Independent Medical Expert (IME) opinions at the Regional Office.

10. Require the Administrator, at both the Regional Office and BVA level, to furnish a claimant with notice that an IME opinion has been requested and, when such opinion is received, furnish the claimant with a copy of the opinion.

11. Prohibit an attorney or agent from receiving any fee for services rendered prior to the rendering of the first final BVA decision; and authorize the payment of reasonable attorney's fees after the BVA first makes a final decision, as follows:

(a) authorize reasonable attorney's fees—for services of an attorney retained within one year after the final BVA decision, and in court—for representation of individuals before VA;

(b) require the filing of a copy of any fee agreement between the agent or attorney and the claimant with VA or the Court, at such time as specified;

(c) authorize the Administrator and Court, on their own initiation or at the request of a party, to review such a fee arrangement and order a reduction in the fee if the Administrator or Court finds the fee to be excessive or unreasonable; and

(d) provide that such an order would not be reviewable in any court beyond the Court of Veterans Appeals.

12. Modified the penalties for violation of restrictions on the amount attorneys may receive in connection with certain VA matters, to reduce the maximum term of imprisonment from two years to one year and to provide for fines as provided for in title 18, relating to crimes and criminal prosecutions, rather than a fine of $500, thereby reducing the offense to a misdemeanor.

Board of Veterans Appeals

13. Encourage the Board to employ sufficient numbers of members and support personnel to enable it to dispose of appeals before it in a timely manner.

14. Require the President, on or after February 1, 1989, and by and with the advice and consent of the Senate, to appoint a BVA Chairman for a term of six years and provide that the Chairman so appointed may be removed by the President, after notice and hearing, for misconduct, inefficiency, neglect of duty, or engaging in the practice of law or for physical or mental disability which, in the opinion of the President, prevents the proper execution of the Chairman's duties.

15. Require the Administrator, with the approval of the President and based upon the recommendations of the Chairman, to appoint Board members for a term of nine years and allow Board members to be removed by the Administrator for good cause, subject to the due process protections in title 5 relating to adverse personnel actions against Administrative Law Judges.

16. Provide that, of the first Board members appointed to a term of years, 22 would be appointed for a three-year term, 22 for a six-year term, and 22 for a nine-year term; and that an individual who is serving as a member of the Board on the date of enactment of this Act may continue to serve until the earlier of the date on which the individual's successor is appointed or the expiration of the 180-day period after the Chairman is appointed by the President by and with the advice and consent of the Senate.

17. Require the Chairman to be paid at Executive Level IV.

18. Require the BVA Chairman to include as part of VA budget justification documents—which are submitted annually to Congress in conjunction with the President's budget—a report to the Committees on Veterans' Affairs on the Board's current and future workload and its ability, based on then current and projected staffing, to dispose of appeals in a timely manner.

19. Provide that, if incentive awards for Board members are otherwise authorized by law, the Chairman may make a determination as to which members may receive such an award, taking into consideration the quality of performance of the Board member.

20. With respect to determinations by the BVA (a) provide for decisions, for either an allowance or a denial, to be by a majority vote; (b) provide that such a decision is final unless the Chairman orders a reconsideration; and (c) require that, if the Chairman orders a reconsideration, the Chairman must expand the panel which entered the original decision.

21. Specify that a BVA decision is to be made after giving the claimant an opportunity for a hearing and must be made on the evidence and material of record.

22. Require that BVA decisions include findings and conclusions and reasons and bases therefor, on all material issues of fact and law as well as orders granting or denying relief; and require the BVA to mail a copy of its decision to the claimant and the claimant's authorized representative, if any, at the last known address of the claimant and such representative.

23. Specify that a claimant is not presumed to agree with any statement of fact contained in a Statement of the Case.

24. Allow a claimant to request a hearing before a traveling section of the BVA and require that the scheduling of such hearings will be in the order in which the requests are received by VA.

United States Court of Veterans Appeals

25. Provide for the Court of Veterans Appeals to have exclusive jurisdiction to review decisions of the BVA, except for review of the schedule of ratings for disabilities under section 355 of title 38 or any action of the Administrator in adopting or revising that schedule, and specify that the Court shall have the power to affirm, modify, or reverse a decision of the Board, or to remand the matter.

26. Require that, in cases of individual claims for benefits, review would be based on the record of proceedings before the VA Regional Office and the BVA, and the Administrator may not appeal to the Court. Decisions of the Court would be subject to appellate review in the Federal Circuit, except that no other court would be permitted to review a determination by the Court of a factual matter.

27. Provide for the composition of the Court to be as follows:

(a) the Court will be composed of a Chief Judge and not more than 6 nor less than 2 Associate Judges, with each to serve a term of 15 years;

(b) the salary of the Chief Judge is the same as that received by a U.S. Court of Appeals Judge and the salary of the Associate Judges is the same of that received by a U.S. District Court Judge;

(c) Judges must be members in good standing of the bar of a Federal court or of the highest court of a State and be appointed by the President, by and with the advice and consent of the Senate, on the grounds of fitness to perform the duties of the office;

(d) not more than half plus one of the Judges may be from the same political party;

(e) the Chief Judge will be the head of the Court; and

(f) the President is authorized to remove a Judge from office, after notice and an opportunity for a hearing, on grounds of misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability which, in the opinion of the President, prevents the judge from executing his or her duties.

28. Provide for the Court to be organized in the following manner:

(a) The Court will have a judicially noticed seal;

(b) Judges may hear cases alone or sitting in panels of at least three Judges, pursuant to procedures established by the Court;

(c) a majority of Judges constitutes a quorum for the transaction of business of the Court, and a majority of a panel constitutes a quorum for the transaction of the business of a panel; and

(d) a vacancy in the court or a panel shall not impair the powers or affect the duties of the Court or a panel or the remaining judges of the Court or of a panel.

29. Provide that the Court have its principal office in the District of Columbia but may sit any place within the United States.

30. Authorize that the principal office of the Court be located, if practicable, in an existing facility that, in the judgment of the Administrative Office of the United States Courts (AOUSC), would maximize efficiency and economy in the operation of the Court, with the AOUSC taking into consideration the convenience of the location to needed library resources, support equipment, and personnel and other needed resources.

31. Provide that the Chief Judge is to prescribe the times and places of sessions of the Court.

32. Provide that the Court's scope of review would be as follows:

(a) The Court, to the extent necessary to its decision and when presented (except with respect to the disability rating schedule), would be authorized to decide all relevant questions of law; to interpret constitutional, statutory, and regulatory provisions; to determine the meaning or applicability of the terms of actions of the Administrator; to compel action of the Administrator unlawfully withheld; and to hold unlawful and set aside decisions, findings (other than findings described in clause (v), below), conclusions, rules and regulations of the Administrator or the BVA or its Chairman found to be—

(i) arbitrary, capricious, an abuse of discretion, or not in accordance with law;

(ii) contrary to constitutional right, power, privilege, or immunity;

(iii) in excess of statutory jurisdiction, authority, or limitation, or in violation of a statutory right;

(iv) without observance of procedure required by law; or

(v) in the case of a finding of material fact made in reaching a decision on a claim for VA benefits, hold the finding unlawful and set it aside when it is clearly erroneous.

(b) In no event shall findings of fact made by the Administrator or the Board be subject to trial de novo by the court.

(c) When a final decision of the Board is adverse to a party and the sole stated basis for such a decision is the failure of such party to comply with any applicable regulation, the Court is restricted to reviewing only the questions raised as to compliance with and the validity of regulations.

33. Authorize the Court to impose a fee, not to exceed $50, for the filing of any appeal with the Court, and permit the fee to be waived by the Court upon a demonstration that it would impose a hardship, with a decision on the waiver not reviewable in any other court; and authorize the Court to raise the filing fee periodi-

cally, taking into account inflation and the fees charged by other Article I courts.

34. Provide that the Administrator is to be represented before the Court by the VA General Counsel, that appellants would be represented in accordance with the rules of practice prescribed by the Court, and that, in addition to members of the bar, the Court may allow other persons to practice before the Court who meet standards of proficiency prescribed by the Court in its rules of practice.

35. Require a person representing an appellant before the Court to file a copy of any fee agreement with the Court at the time the appeal is filed and authorize the Court to review the fee agreement and order a reduction in the fee if the Court finds the fee to be excessive or unreasonable; and provide that such an order is final and not reviewable by any other court.

36. Authorize the Court to prescribe its own rules of practice and procedure.

37. Authorize the Court—

(a) to punish certain behaviors it finds to be in contempt of court;

(b) to provide for the Court to have the same assistance in carrying out its writ, process, order, rule, decrees, or command as is available to a Federal court; and

(c) to require the U.S. Marshal for a district in which the court is sitting, upon the request of the Court's Chief Judge, to attend any session of the Court.

38. Authorize judicial review of a final BVA decision which is adverse to the claimant upon the filing of a notice of appeal with the Court within 120 days after the BVA's mailing of notice of the final decision. A copy of the notice is also required to be filed with the Board but a defect in that filing would not affect the effectiveness of a timely filing of notice of appeal with the Court.

39. Authorize that decisions be made and given in the following manner:

(a) The Court shall make a decision on appeal as quickly as practicable and include in its decision a statement of its conclusions of law and determination as to factual matters.

(b) In cases heard by a panel, a majority vote decides the case.

(c) A decision of the judge or panel becomes final 30 days after the date issued, and a panel, extended panel, or the Court sitting en banc may review the decision when the Court so directs upon the motion of a party or its own initiative.

(d) The Court is required to specify in its decision any Government records on which it relied and to require the VA to preserve records so specified for not less than the period designated by the Administrator of the National Archives and Records Administration.

40. Provide that all decisions of the Court, and transcripts of its hearings, are public records open for inspection, except when the Court determines it is necessary to protect such records to prevent the disclosure of confidential information.

41. Provide that after a decision becomes final, the Court must permit a party to reclaim original documents and other exhibits, or may make such other disposition as it considers advisable.

42. Allow the Court to provide for the publication of decisions as designated by the Court or Chief Judge in such form and manner as may be best adapted for public information and use; and authorize the Court to provide for itself or the Chief Judge to make appropriate exceptions to the general requirement of publication.

43. Provide that authorized publication is competent evidence of the reports of the Court in all courts of the United States and of the several States without further authentication.

44. Require the reports to be subject to sale in the same manner and on the same terms as other public documents.

45. Authorize the Court to appoint and pay such employees, in accordance with title 5 competitive service provisions and subchapter III of chapter 5 pay provisions, as are necessary to execute the functions vested in the court.

46. Authorize the Court to classify positions based upon the classification of comparable positions in the Judicial Branch.

47. Require that all fees, except those which are collected from practice fees, received by the Court be deposited into the Treasury as miscellaneous receipts.

48. Authorize the Court to make such expenditures as may be necessary to execute efficiently the functions vested in the Court, with the expenditures to be paid out of appropriated money, except for that which is collected from practice fees, upon the presentation of itemized vouchers signed by the certifying officer designated by the Chief Judge.

49. Authorize the Court to fix a fee, not to exceed that charged by district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any other papers and the comparison and certification thereof.

50. Authorize the Court, in its discretion, to impose a periodic registration fee, not to exceed $30 per year, on persons admitted to practice before the court, and provide that such fees are to be available to the Court for the purpose of employing independent counsel to pursue disciplinary matters and to offset administrative costs of implementing its standards of proficiency for practitioners before the Court.

51. Require that a decision by the Court would become final when one of the following sets of circumstances occurs:

(a) The time for filing an appeal to the Federal Circuit has expired without an appeal being filed.

(b) The Federal Circuit affirms the decision of the Court or dismisses the appeal and either (1) the time for filing a petition for *certiorari* has expired without a petition being filed, or (2) a petition for *certiorari* is denied.

(c) The Supreme Court directs that the decision of the Court be affirmed or the appeal to the Federal Circuit be dismissed and 30 days have expired after the date of the mandate of the Supreme Court.

(d) The Supreme Court orders the decision of the Court to be modified or reversed and either (1) after the court renders a decision pursuant to the Supreme Court's mandate, 30 days have expired without the petitioner or the Administrator instituting proceedings to have the Court's decision corrected to accord with the Supreme Court's mandate, or (2) either the Administrator or the

petitioner institutes such proceedings within that 30 days and the decision is corrected.

(e) The Federal Circuit modifies or reverses the decision of the Court and either (1) the time for filing a petition for *certiorari* with the Supreme Court has expired without a petition being filed, or (2) a petition for *certiorari* is denied.

(f) The Federal Circuit modifies or reverses the decision of the Court, the Supreme Court affirms the Federal Circuit's decision, and either (1) after the Court renders a decision pursuant to the Federal Circuit's mandate, 30 days have expired without either the petitioner or the Administrator instituting proceedings to have the Court's decision corrected to accord with the Supreme Court's mandate, or (2) either the Administrator or the petitioner has instituted such proceedings within that 30 days and the decision is corrected.

(g) If either the Supreme Court orders a rehearing, or the Federal Circuit remands the case to the Court for a rehearing, and (1) the time for filing a petition for *certiorari* has expired without a petition having been filed, (2) such a petition has been denied, or (3) the Federal Circuit's decision has been affirmed by the Supreme Court, the decision of the Court becomes final in the same manner as it would if no prior decision of the Court had been rendered.

52. Provide for review of decisions of the Court by the Federal Circuit as follows:

(a) Any party to a decision of the Court may obtain a review of the decision with respect to the validity of any statute or regulation relied on by the Court in making the decision (other than a refusal to review the schedule of ratings for disabilities under section 355 of title 38) or any interpretation thereof.

(b) Such a review would be obtained by filing a notice of appeal with the Court of Veterans' Appeals within the time and in the manner prescribed for appeal to the U.S. Courts of Appeals from U.S. District Courts.

(c) The Federal Circuit shall hold unlawful and set aside any statute or regulation or any interpretation thereof (other than a determination as to a factual matter) that was relied upon in the decision of the Court of Veterans Appeals that the Federal Circuit finds to be—

(i) arbitrary, capricious, an abuse of descretion, or otherwise not in accordance with law;

(ii) contrary to constitutional right, power, prevelege, or immunity;

(iii) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(iv) without observance of procedure required by law.

(d) The Federal Circuit has exclusive jurisdiction of the review described above, and the decision of the Federal Circuit is final subject to review by the Supreme Court upon *certiorari,* in the manner provided in section 1254 of title 28.

(e) Under certain circumstances, an interlocutory appeal may be taken to the Federal Circuit to resolve a controlling question of law if the ultimate determination of the case may be materially advanced by the immediate consideration of the question.

(f) The Federal Circuit has the power to affirm, modify, reverse, or remand the decision of the Court of Veterans Appeals.

(g) Rules for review of decisions of the Court of Veterans Appeals are to be those prescribed by the Supreme Court under section 2072 of title 28.

(h) Except to the extent that an appeal under this chapter presents a constitutional issue, the Federal Circuit may not review a challenge to a factual determination or a challenge to a law or regulation as applied to a particular case.

53. Provide that Judges may be appointed to the Court after February 1, 1989, and that the President shall, during the period beginning on January 21, 1989, and ending on April 1, 1989, nominate an individual to be Chief Judge of the Court.

Effective Date and Applicability

54. Specify that, except for the matters described below, the Act takes effect on September 1, 1989, and that the judicial review provisions apply to cases in which a notice of disagreement is filed on or after the date of enactment.

55. Provide that section 201(a), relating to the appointment and removal of the Chairman and members of the BVA, would take effect on February 1, 1989.

56. Provide that section 302, relating to the appointment of the Chief Judge and Associate Judges, and section 303, relating to the location of the Court, take effect on the date of enactment.

57. Make sections 201(b), (c), and (d), and sections 202 through 207, relating to the BVA operations, and section 208, relating to the report filed by the BVA Chairman, effective on the date of the enactment of the Act.

58. Make the provisions relating to attorneys' fees applicable to cases in which the notice of disagreement was filed on or after the date of enactment.

X. Burial Benefits and Memorial Affairs

A. OVERVIEW

The VA burial benefits program provides for the following: The payment of an allowance of $300 (plus transportation charges where death occurs during care at a VA facility) to help defray the burial and funeral expenses of certain deceased veterans; to payment of an allowance of $150 for a burial plot in cases where an eligible veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States; the payment of a burial allowance of up to $1,500 when a veteran dies as a result of service-connected disability; a flag to drape over the casket of each eligible deceased veteran; a headstone or marker for the grave of a veteran and of certain eligible dependents, or a cash allowance toward the purchase thereof.

VA operates the National Cemetery System (not including Arlington National Cemetery), comprising 112 cemetery facilities. Eligible veterans and certain dependents may be interred at such cemeteries. In addtion, VA operates a program of matching-fund grants to States for the construction of State veterans' cemeteries.

The American Battle Monuments Commission maintains overseas military and naval monuments and cemeteries for servicepersons who died in foreign conflicts.

B. FIRST SESSION

No legislation relating to veterans' burial benefits or memorial matters were enacted in the First Session.

C. SECOND SESSION

The Veterans' Benefits and Services Act of 1988 (Public Law 100–322), the legislative history of which is described above in the discussion of Compensation, contained provisions which:

1. Increased from $1,100 to $1,500, the burial benefits payable in the cases of those who die from service-connected causes.

2. Permit VA to place flat markers on graves in cemeteries located on the grounds of or adjacent to a VA health-care facility, and in the national cemeteries in Riverside, CA, Bourne, MA, Augusta, MI, Indiantown Gap, PA, and the proposed national cemetery for Northern California.

3. Authorize VA to make grants for construction on land adjacent to a national cemetery in order to facilitate safe ingress and egress from the cemetery.

4. Repealed the prohibition against a State receiving more than 20 percent of the total funds appropriated for the State Cemetery Grant program in any one year.

5. Authorize the Administrator to provide graveliners for use in National Cemetery System facilities and the Secretary of the Army to provide graveliners at Arlington National Cemetery.

6. Require that not later than 6 months after the date of enactment, the Administrator and the State of Arizona enter into an agreement for conveying title to the Arizona State Veterans Memorial Cemetery to VA, to become part of the National Cemetery System; require that the contract obligate the State to provide certain supplementary funding necessary to continue the level of operation and maintenance as of the date of the agreement during the 3-year period beginning on the date of the conveyance; and generally prohibit VA during that 3-year period from spending more on the operation and maintenance than it would have paid annually for allowances for burials at the cemetery.

7. Establish a currency fluctuation account for the American Battle Monuments Commission to protect Commission operations from the negative effects of declining dollar values abroad and the authorized appropriation of $3 million for the account.

Division B of Public Law 100–687 (the legislative history of which is described above in the discussion of compensation) contained provisions which:

1. Extended for 5 years, through FY 1994, the authorization of appropriations for the program of matching-fund grants for the construction of State veterans cemeteries.

2. Require the American Battle Monuments Commission, if an agreement is reached between the United States and Philippine governments for the restoration operation, and maintenance of the Pacific War Memorial (PWM) and certain other historical sites on

Corregidor and subject to certain restrictions relating to funding, to restore, operate, and maintain the PWM and such other sites.

XI. Insurance

A. OVERVIEW

VA administers six life insurance programs, and supervises the administration of a seventh program, for the benefit of servicepersons and veterans and their beneficiaries. There are seven million policies, with a total value of $200 billion, in force under these programs.

B. FIRST SESSION

No legislation affecting VA insurance programs was enacted in the First Session.

C. SECOND SESSION

The Veterans' Benefits and Services Act of 1988 (Public Law 100-322), the legislative history of which is described above in the discussion of Compensation, contained provisions which:

1. Authorize VA to make certain actuarially and administratively sound adjustments in the monthly installments paid to beneficiaries receiving proceeds under life annuity settlement options under the National Service Life Insurance, Veterans Special Life Insurance, and Veterans Reopened Insurance programs.
2. Prohibit, effective with respect to premiums paid after June 30, 1988, State taxation of premiums paid under a Servicemen's Group Life Insurance or Veterans' Group Life Insurance policy.
3. Require VA to convert the Veterans' Mortgage Insurance program—which is for service-disabled veterans who are eligible for VA specially-adapted housing assistance—from one conducted through a contract with a commercial insurance company acting as the insurer to one administered directly by VA.

XII. Miscellaneous

Public Law 100-322 contained provisions which:

1. Require the Administrator of Veterans' Affairs and the Secretary of Labor, to the maximum extent feasible, to submit with the President's budget submission for each fiscal year the estimated amount, in each of the appropriation requests, that is to be obligated for service or benefits for veterans who performed active military, naval, or air service in combat with the enemy or in a theatre of combat operations during a period of war or other hostilities.
2. Require VA, to the extent the Administrator determines that it is in the best interest of VA and practicable to do so based on the demand for the care, to provide child-care centers at VA facilities for children of VA employees and, to the extent space is available, children of employees of affiliated institutions and research corporations at VA facilities. The programs would be carried out by the Veterans Canteen Service and, to the extent specified, supported by VA.
3. Expand the Advisory Committee on Native American Veterans to include Native Hawaiians; require the Committee to file an

additional report, on February 1, 1989, and extend the duration of the Committee until 90 days after that report is submitted to the Congress.

4. Require VA, upon certain conditions being met, to lease to the Department of Labor for nominal consideration certain property in Minot, North Dakota, for use as a Job Corps Center.

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